

Message Text

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TAGS: UN, PFOR, UR, AS

SUBJ: UNGA LEGAL COMMITTEE: DIPLOMATIC ASYLUM

REF: USUN 5034

1. SUMMARY: 18 NOV WEO GROUP MEETING WAS HELD TO DISCUSS AUSTRALIAN INITIATIVE ON DIPLOMATIC ASYLUM. ALL DELS WHO SPOKE EXPRESSED DIFFICULTIES OF VARYING NATURE AND DEGREE WITH INITIATIVE. MEETING CONCLUDED WITH REQUEST BY WEO CHAIRMAN (FRANCE) THAT INFORMAL GROUP COMPOSED OF US, UK, SWEDEN AND AUSTRIA CONSULT WITH AUSTRALIAN DEL TO SEEK TO REEACH COMPROMISE DRAFT RES ACCEPTABLE TO WEO DELS. END SUMMARY.

2. LENGTHY LEGAL COMITE WEO GROUP MEETING ON AUSTRALIAN DIPLOMATIC ASYLUM (DA) INITIATIVE WAS HELD MONDAY, 18 NOV. AT REQUEST OF CHAIRMAN (JEANNEL OF FRANCE), AUSTRALIAN DEL INTRODUCED SUBJECT. AUSTRALIAN DEL (AMB. BRENNAN) STATED INITIATIVE WAS RESULT OF AUSTRALIAN DESIRE TO REDUCE UN-
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CERTAINLY IN INTERNATIONAL COMMUNITY IN THE IMPLEMENTATION

OF THIS DESIRABLE HUMANITARIAN TOOL. AUSTRALIANS SAW AS FUNDAMENTAL QUESTION IN THIS EXERCISE "IS DIPLOMATIC ASYLUM WHEN GRANTED FOR URGENT HUMANITARIAN REASONS AN UNFRIENDLY ACT?" AUSTRALIANS NOTED THAT THEIR SOUNDINGS INDICATED LEGAL COMITE NOT PREPARED FOR A SUBSTANTIVE DISCUSSION THIS GA, BUT THAT AUSTRALIANS LOOK FORWARD TO SUCH DEBATE NEXT GA. AUSTRALIANS WOULD LIKE TO SEE, AS EVENTUAL CONCLUSION OF ITEM, A DECLARATION OF PRINCIPLES ON DA. SUCH DECLARATION WOULD REFLECT: (A) GRANTING DA IS NOT AN UNFRIENDLY ACT; (B) PRINCIPLES OF SAFE-CONDUCT; (C) THE QUALIFICATIONS OF ELIGIBLE REFUGEES OR ASYLEES; AND (D) WITH REGARD TO LATTER, THAT CRIMINALS, I.E. TERRORISTS, WOULD NOT QUALIFY FOR DA.

3. BRENNAN ASSERTED THAT CLARIFICATION OF PRINCIPLE OF DA WOULD YIELD UNIFORMITY OF PRACTICE WHICH, INTER ALIA, WOULD RESULT IN STRENGTHENING OF IMMUNITY OF DIPLOMATIC MISSIONS. BRENNAN CONCLUDED THAT IF A STATE EXERCISES DA, OR SOME AD HOC VARIANT THEREOF, IT MUST BE PREPARED TO ADMIT OTHER STATES CAN ALSO DO SO WITHIN ITS TERRITORY.

4. NUMEROUS WEO DELS INTERVENED THEREAFTER AND, IN EACH INSTANCE, INTERVENOR EXPRESSED RESERVATION ON, OR OPPOSITION TO, AUSTRALIAN INITIATIVE. DELS WHO SPOKE WERE: GREECE, UK, AUSTRIA, US, FRANCE, FRG, FINLAND, CANADA. JAPAN, SWEDEN, DENMARK, NEW ZEALAND AND ITALY.

5. SOME POINTS MADE, AND OFTEN REPEATED, WERE (A) IT WOULD NOT BE HELPFUL TO ASK "IS DA UNFRIENDLY ACT" SINCE WHEREVER DA HAS BEEN EXERCISED (I.E. LATIN AMERICA) HOST STATE HAS SANCTIONED ITS EXERCISE - ALTERNATIVELY, TO ASK QUESTION IN LEGAL COMITE AND NOT HAVE LEGAL COMITE ISSUE A NEGATIVE ANSWER WOULD BE BLOW TO EVEN AD HOC PRACTICE OF DA, AND ITS IS BY NO MEANS CERTAIN THAT LEGAL COMITE WOULD ANSWER IN NEGATIVE; (B) WHERE AUSTRILIAN DEL VIEWS "UNCERTAINTY" OF DA PRACTICE AS NEGATIVE, MANY WEO DELS VIEW IT AS POSITIVE, SINCE IT PERMITS STATE FLEXIBILITY TO EXERCISE AD HOC GRANTS OF REFUGE OR EVEN DA EVEN THOUGH OFFICIALLY THEY DO NOT RECOGNIZE DA. AS COROLLARY, IF SUBSTANTIVE DISCUSSION OF DA IS UNDERTAKEN, IT WILL ONLY HIGHLIGHT THE FUNDAMENTAL DIFFICULTIES WITH PRACTICE OF DA (WHICH IS INHERENT IN PRESENT "UNCERTAINTY" OF PRACTICE) AND LIMITED OFFICIAL USE

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PERHAPS WRECK DA PRACTICE ENTIRELY; (C) WITH REGARD TO LATTER POINTS, DELS SOUGHT DELETION OF AUSTRALIAN DRAFT RES OPERATIVE PARAGRAPH 1, REFTEL, SINCE THAT CALLED FOR STATES' WRITTEN COMMENTS ON PRACTICE AND REGULATIONS RE DA; (D) DA IS REGIONAL PRACTICE OF LONG REGIONAL DEVELOPMENT, AND INHERENT TO NATURE AND CUSTOMARY VICISSITUDES (I.E. CHANGE OF GOVERNMENT BY REVOLUTION) OF LA REGION, AND IS NOT NECESSARILY APPROPRIATE IN INTERNATIONAL CONTEXT; (E) MANY WEOS REJECT OR ARE PURPOSEFULLY

SILENT ON QUESTION WHETHER DA EXISTS AS PRINCIPLE OF INTERNATIONAL LAW, THOUGH, SAME WEO GOVERNMENTS PRACTICE HUMANITARIAN ASSISTANCE ON CASE BY CASE BASIS. TO DISCUSS LAW AND PRACTICE COULD RESULT IN INTERNATL PRESSURES EITHER TO ABANDON AD HOC EXERCISE ENTIRELY OR TO ACCEPT PRINCIPLE IN TOTO, AND LATER WOULD MEAN SERIOUS IMPAIRMENT OF NORMAL OPERATIONS OF DIPLOMATIC LEGATIONS; (F) AS TO LATTER, AUSTRALIAN DRAFT RES DOES NOT REFLECT DIFFERENCE BETWEEN TERRITORIAL ASYLUM AND DA, AND AS A RESULT ARGUES EXTRATERRITORIAL REATIONALE FOR INVIOABILITY OF DIPLOMATIC MISSIONS NOT ACCEPTED BY MOST WEOS; (G) AUSTRALIANS HAVE NOT TAKEN ACCOUNT OF SERIOUS LIKELIHOOD THAT AFRICANS AND ARABS WILL LATCH ONTO THIS ITEM AS MEANS OF GETTING SPECIAL TREATMENT FOR THOSE INVOLVED IN "NATIONAL LIBERATION MOVEMENTS", AND IF LATTER ISSUE WERE TO ARISE WEOS WOULD PROBABLY NOT BE ABLE TO DEFEAT IT; (H) AS A RESULT OF ALL ABOVE, WEOS ARE CONCERNED ANY SUBSTANTIVE DEBATE WILL HAVE ADVERSE AFFECT, AND WOULD WISH MINIZE PROSPECTS OF SUCH DEBATE; AND (I) SINCE DELS DO NOT WISH SUBSTANTIVE DEBAE ON ITEM, THEY DO NOT WISH TO SEE ITEM AUTOMATICALLY INSCRIBED ON AGENDA OF NEXT GA.

6. DURING DISCUSSION, USDEL NOTED THAT INASMUCH AS ITEM WAS INSCRIBED AND DRAFT RES CIRCULATED (AS WORKING PAPER), IT WOULD BE IN INTEREST OF ALL WEOS IF ACCEPTABLE FORMULATION COULD BE FOUND. IN THAT CONTEXT, USDEL SUGGESTED THAT CONCERNS EXPRESSED BY WEOS AND DESIRES OF AUSTRALIA COULD POSSIBLY BE MET BY FOLLOWING CHANGES TO AUSTRALIAN DRAFT RES, REFTEL: (A) DELETE FIRST THREE PREAMBULAR PARAS, SINCE THEY RELATED ESSENTIALLY TO TERRITORIAL ASYLUM, IMPLY DA IS IDENTICAL THERETO, AND THEY PREJUDGE CONCLUSION OF DA ITEM IN GA; (B) REVISE FOURTH PREAMBULAR PARA TO READ "QUESTION OF DA" RATHER THAN "DA" WHICH WOULD SUGGEST DA IS AN ACCEPTED PRINCIPLE OF INTERNATIONAL LAW; (C) DELETE OPERATIVE PARA 1, LIMITED OFFICIAL USE

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FOR REASONS STATED THIS TEL; (D) AMEND OPERATIVE PARA 2 SO AS TO ELIMINATE THE UNNECESSARY AND PERHAPS PREJUDICIAL LISTING OF ITEMS SYG IS TO CONSIDER IN MAKING HIS REPORT; AND (E) REVISE OPERATIVE PARA 3 TO INSCRIBE AN ITEM ENTITLED "NEED TO CONSIDER FURTHER EXAMINATION OF THE QUESTION OF DA". THIS WOULD PERMIT NEXT GA TO DECIDE IN LIGHT OF SYG REPORT, WHETHER IT WAS IN BEST INTEREST OF DA PRACTICE FOR GA TO CONTINUE CONSIDERATION OF ITEM, AND, IF SO, IN WHAT MANNER.

7. VARIOUS DELS EXPRESSED SUPPORT, OR GENERAL APPROVAL OF, US FORMULATIONS, AND AUSTRALIANS INDICATED A WILLINGNESS TO CONSIDER THEM, THOUGH AUSTRALIANS ALSO STATED THEIR DRAFT RES HAD BEEN CIRCULATED TO ALL DELS AND SINCE SOME DELS MIGHT WISH TO COSPONSOR, THEY TOO WOULD HAVE TO BE CONSULTED ON ANY CHANGES. CHAIR SUGGESTED THAT SINCE WEOS HAD GENERAL DIFFICULTY WITH

AUSTRALIAN DRAFT RES IT WOULD BE HELPFUL IF AN AD HOC WEO GROUP CONSULTED ON THIS MATTER WITH AUSTRALIA, AND, IF AGREEMENT REACHED, AUSTRALIAN DEL COULD TAKE CHANGES TO ANY COSPONSORS. IT WAS SO AGREED AND CHAIR INDICATED US, UK, AUSTRIA AND SWEDEN TO UNDERTAKE NEGOTIATIONS WITH AUSTRALIA. AFTER MEETING AUSTRALIAN DEL (COLES) THANKED USDEL FOR HELPFUL SUGGESTIONS.

8. DURING DISCUSSION, SWEDISH DEL INFORMED MEETING THAT HE HAD BEEN ADVISED BY (UNNAMED) SOVIET THAT THE NEW SOVIET INITIATIVE ON THE VIENNA CONCENTION ON DIPLOMATIC RELATIONS WAS AIMED, INTER ALIA, AT AUSTALIAN DA ITEM. IT WAS INTENDED THAT GA CONCLUDE THAT (A) THE CONVENTION DOES NOT SANCTION, NOR PERMIT, DA, AND (B) AS A RESULT DA IS NOT AN ACCEPTED PRINCIPLE OF INTERNATIONAL LAW. AUSTRIAN DEL (ZEMANEK) INFORMED US DEL, IN AN ASIDE, THAT SOVIET DEL (KOLESNIK) HAD ADVISED HIM IN SAME MANNER. AUSTRALIAN DEL OFFERED NOT COMMENT ON THIS REPORT.
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